

ITEL

13666

RECORDATION NO. Filed 1425

Rail Division

Two Embarcadero Center
San Francisco, California 94111
(415) 955-9090
Telex 34234

JUN 17 1982-10 50 AM

June 2, 1982 INTERSTATE COMMERCE COMMISSION

Ms. Agatha Mergenovich, Secretary
Interstate Commerce Commission
Washington, D.C. 20423

2-163A090
No. 1 JUN 17 1982
Date
Fee \$ 60.00
ICC Washington, D. C.

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I.C.C.
FEE OPERATION BR.

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. Section 11303(a) and the Interstate Commerce Commission's rules and regulations thereunder, I enclose herewith on behalf of Itel Corporation, for filing and recordation, four counterparts of the following document:

Sublease Agreement dated February 18, 1982, between
Kyle Railways, Inc. as sublessor and Natchez Trace
Railroad as sublessee (the "Sublease").

The names and addresses of the parties to the aforementioned Sublease are:

1. Kyle Railways, Inc.
861 Sixth Avenue, Suite 419
San Diego, California 92101
2. Natchez Trace Railroad
P.O. Box 477
Holly Springs, Mississippi 38635

→ Please cross-index the above-referenced Sublease with the following document, which is being submitted concurrently herewith for filing and recordation: under the name NATCHEZ TRACE RAILROAD IN LESSEE INDEX BOOK.
~~Lease Agreement dated February 17, 1982, between
Itel Corporation, Rail Division and Kyle Railways, Inc.~~

The equipment covered by this Sublease is seventy (70) 70-ton boxcars, 50'6" in length (A.A.R. mechanical designation XM) bearing reporting marks as described in Exhibit A attached to this letter.

Agatha Mergenovich
John H. ...

Ms. Agatha Mergenovich, Secretary
June 2, 1982
Page Two

Also enclosed is a check in the amount of \$60.00 for the required recording fee.

Please stamp all counterparts of the enclosed Sublease with your official recording stamp. You will wish to retain one (1) counterpart of the document for your files; it is requested that the remaining three (3) counterparts be delivered to the bearer of this letter.

Sincerely,



Patricia Salas Pineda
Counsel

PSP:dmm
Enclosures

cc: Michael Walsh, Esq.
Weil, Gotshal & Manges
767 Fifth Avenue
New York, New York 10020

Robert S. Clark, Esq.
Senior Trust Officer
First Security Bank of Utah, N.A.
Corporate Trust Division
79 South Main Street
Salt Lake City, Utah 84111

Doug Drummond
Iitel Corporation

Linda Lawrence
Iitel Corporation

EXHIBIT A

Previous Car Numbers

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7007
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Current Car Numbers

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13666 B
RECORDATION NO. _____ Filed 1426

SUBLEASE AGREEMENT JUN 17 1982 - 10 50 AM

INTERSTATE COMMERCE COMMISSION

THIS SUBLEASE AGREEMENT (the "Sublease") made as of this 18th day of February, 1982, between KYLE RAILWAYS, INC., a Delaware corporation, 861 6th Avenue, Suite 419, San Diego, California 92101, as the sublessor ("Sublessor") and NATCHEZ TRACE RAILROAD, P.O. Box 477, Holly Springs, Mississippi 38635, a Mississippi corporation, as the sublessee ("Sublessee").

1. Scope of Sublease

- A. Sublessor agrees to lease to Sublessee, and Sublessee agrees to lease from the Sublessor upon the terms and conditions set forth herein, a number of items of equipment of the number, type, construction and other description set forth in any lease schedules executed by the parties concurrently herewith or hereafter and made a part of this Sublease. The word "Schedule" as used herein includes the Schedule or Schedules executed herewith and any additional Schedules and amendments thereto, each of which when signed by both parties shall be a part of this Sublease. The scheduled items of equipment are hereinafter called collectively the "Cars" and individually a "Car".
- B. It is the intent of the parties to this Sublease that Sublessor shall at all times be and remain the sublessor of all Cars. Sublessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and it will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

- A. This Sublease shall remain in full force until it is terminated as to all of the Cars as provided herein. The term of the Sublease with respect to each Car described on each Schedule shall commence at 12:00 P.M. on the date and at the location that such Car is repainted and remarked pursuant to Section 3.A., and shall expire as to all of the Cars described on each Schedule, twelve (12) years from the date on which the last Car on such Schedule was remarked (the "Initial Term").
- B. If this Sublease has not been earlier terminated and no default has occurred, which is continuing, the Sublease shall automatically be extended for not more than five consecutive periods of twelve (12) months each (the "Extended Term") with respect to all of the Cars described on each Schedule, provided however, that Sublessor or Sublessee may terminate this Sublease at the end of the Initial Term or any Extended Terms as to all, but not fewer than all, of the Cars on the Schedules by written notice delivered to the other not less than twelve (12) months prior to the end of the Initial Term or any Extended Terms.

3. Supply Provisions

- A. Sublessee hereby approves the specifications of the Cars delivered to it by Sublessor. Sublessor shall, at its own expense, remark the Cars with the railroad markings of Sublessee in compliance with all applicable regulations. Delivery, with respect to each Car, shall occur upon the "Initial Loading" (as hereinafter defined) of such Car. After the Cars have been repainted and remarked, the Cars shall be moved to Sublessee's railroad line at no cost to Sublessee as soon as is consistent with mutual convenience and economy. Notwithstanding that Sublessee may not have immediate physical possession of the Cars leased hereunder, Sublessee agrees to pay the rent set forth in this Sublease. To move the Cars to Sublessee's railroad line and to ensure optimal use of the Cars after the Initial Loading (as hereinafter defined), Sublessor agrees to assist Sublessee in monitoring Car movements and, when deemed necessary by Sublessee and Sublessor, to assist in the issuance of movement orders with respect to such Cars to other railroad lines in accordance with Interstate Commerce Commission ("ICC") and Association of American Railroads ("AAR") interchange rules. If Sublessor incurs expenses in having other railroads move Cars in accordance with this Section, except for any expenses incurred in the initial delivery of such Cars to Sublessee's railroad line pursuant to this Section, Sublessee shall reimburse Sublessor for such expenses within ten (10) days of receipt of invoice from Sublessor. For the purposes hereof, the term "Initial Loading", with respect to each Car, shall be the earlier to occur of either the date that such Car is interchanged with its first load of freight into interline revenue service or the date on which such Car commences its initial movement to Sublessee's railroad line under UFC 6000.
- B. Sublessee shall load the Cars leased from Sublessor prior to loading substantially similar Cars leased by Sublessee from other parties. Subsequent to the date of this Sublease, purchased by Sublessee subsequent to the date of this Sublease, or interchanged from other railroads; provided, however, that this shall in no event prevent or prohibit Sublessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefore. During the term of this Sublease, Sublessor may, at its expense, replace any or all of the Cars with similar cars upon prior written notice from Sublessor to Sublessee.

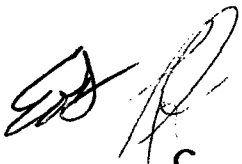
4. Record Keeping

- A. Sublessor shall, at its expense, prepare and file, with respect to the Cars, all documents relating to the registration, maintenance and record keeping functions normally performed by a railroad with respect to railroad equipment of the type subject to this Sublease. Such matters shall include, but are not limited to the following: (i) preparation of appropriate AAR interchange agreements with respect to the Cars; (ii) registration of the Cars in the Official Railway Equipment Register and the Universal Machine Language Equipment Register ("UMLER"); and (iii) preparation of any reports as may be required from time to time by the Interstate Commerce Commission ("ICC") and/or any other regulatory agencies with respect to the Cars. Sublessor requests and Sublessee hereby agrees and authorizes Itel Corporation, Rail Division ("Itel Rail") to be the recipient of AAR car hire exchange tapes with respect to the Cars and agrees to execute any other documents necessary for such authorization.

- B. Sublessor shall perform all record keeping functions relating to the use of the Cars by Sublessee and other railroads, including but not limited to, car hire reconciliation, collection and receipt of Revenues (as hereinafter defined in Section 6) from other railroad companies, maintenance and repair, and billing in accordance with the AAR Interchange Rules ("Interchange Rules"). Sublessor requests and Sublessee hereby agrees and authorizes Itel Rail to immediately upon receipt from other railroads of any Revenues in the form of a draft, check or other instrument payable to Sublessee, endorse and deposit such draft, check or other instrument into Itel Rail's account and to retain such Revenues as set forth in Section 6.D. All record keeping performed by Sublessor hereunder and all records of payments, changes and correspondence related to the Cars shall be separately recorded and maintained by Sublessor in a form suitable for reasonable inspection by Sublessee from time to time during Sublessor's regular business hours. Upon Sublessor's reasonable request, Sublessee shall supply Sublessor with daily telephone reports of the number of Cars in Sublessee's possession or control. Sublessee shall, on a monthly basis, supply Sublessor with copies of Sublessee's interchange records with respect to the Cars interchanged to and from Sublessee's railroad line. Upon Sublessor's request, Sublessee shall promptly provide Sublessor with records of Sublessee's car hire payables. In the event Sublessee fails to provide Sublessor with car hire payables, and as a result, a user or handling railroad refuses to pay Revenues (as hereinafter defined in Section 6) owed, Sublessee shall, within ten (10) days after Sublessor's request, pay to Sublessor such unpaid Revenues. Sublessor has the right to offset against Sublessee's revenue sharing portion set forth in Section 6.C., any sums arising out of this Sublease which are owed by Sublessee to Sublessor but which remain unpaid; provided, however, that Sublessee may, in good faith and by appropriate proceedings, contest any such offset against Sublessee's revenue sharing portion.
- C. If Sublessee now possesses, acquires or leases additional equipment bearing the reporting marks of Sublessee from a party other than Sublessor ("Other Equipment"), Sublessor shall, concurrently with such possession, acquisition or leasing of Other Equipment, be entitled to perform car hire accounting for the Other Equipment. Sublessor shall, on behalf of Sublessee, receive car hire rental and other payments relating to the use and handling of the Other Equipment by other railroads ("Funds") and shall deposit the Funds into an Agency Bank Account for the purpose of segregating the Funds from the Revenues (as hereinafter defined in Section 6) relating to the Cars so as to insure that the interests of both Sublessor and Sublessee are protected. Such Funds shall be distributed under said Agency Bank Account according to Sublessee's instructions. Sublessor and Sublessee shall enter into a car hire service agreement ("Car Hire Agreement") associated with Sublessor's performance of car hire accounting for any unit of Other Equipment which is in excess of the two hundredth (200th) unit of Other Equipment ("Excess Other Equipment"). Under such Car Hire Agreement Sublessee shall agree to pay to Sublessor, on a monthly basis, a fee ("Fee") in an amount equal to Sublessor's car hire accounting then current direct operating expenses, associated, on a pro rata basis, with Sublessor's performance of car hire accounting for each unit of Excess Other Equipment. Any such Fee shall not exceed \$3.00 per month for each unit of Excess Other Equipment during 1982 ("Initial Calendar Year"). For each calendar year following the Initial Calendar Year, any

such monthly Fee for each unit of Excess Other Equipment shall not exceed an amount which is equal to \$3.00 multiplied by the index (hereinafter "Index") in effect at the beginning of such calendar year divided by the Index in effect as of April 1, 1982. Such Index shall be the "United States: Material Prices, Wages and Supplements (excluding fuel)" Index listed within the Quarterly Indexes of Railroad Charge-out Prices and Wage Rates as published by the Economics and Finance Department of the Association of American Railroads.

5. Maintenance, Tax and Insurance

- A. Except as otherwise provided herein, Sublessor shall, at its expense, perform or have performed all inspections of, maintenance and repairs to, and servicing of the Cars as shall be necessary to maintain the Cars in good operating condition and in conformity with the Interchange Rules, provided, however, that such repair, maintenance and servicing shall be performed at Sublessee's expense in the event it was occasioned by the fault of Sublessee, or arises in those instances in which the Interchange Rules would assign responsibility to Sublessee for the loss, damage, destruction or liability requiring such repair, maintenance or servicing. Sublessee shall inspect all Cars interchanged to it to insure that such Cars are in good working order and condition and Sublessee shall be liable to Sublessor for any repairs required for damage not noted at the time of interchange.
- B. Sublessor shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition. Sublessee may, at Sublessor's expense, make running repairs to facilitate continued immediate use of each Car, but shall not otherwise make any repairs, alterations, improvements, or additions to any Car ~~while on Sublessee's railroad line~~ without Sublessor's prior written consent. Sublessee shall be liable to Sublessor for any revenues lost due to any unauthorized repair, alterations, improvement or addition. ^(A) Title to any such alteration, improvement or addition shall be and remain with Sublessor. *(A) while on Sublessee's railroad line*
-  C. As long as this Sublease shall remain in effect, Sublessee shall be responsible for the Cars (i) while in Sublessee's possession or control, and (ii) in the same manner that Sublessee is responsible under Interchange Rules for similar equipment not owned by Sublessee. Sublessee shall, at all times while this Sublease is in effect, at its own expense, cause to be carried and maintained (a) physical loss or damage insurance with respect to the Cars while on Sublessee's tracks; and (b) public liability insurance with respect to third party personal injury and property damage, in each case in such amounts and for such risks and with such insurance companies as are consistent with prudent industry practice. Sublessee shall furnish to Sublessor concurrently with execution hereof, and thereafter at intervals of not more than twelve (12) calendar months, certificates of insurance evidencing the aforesaid insurance. All insurance shall be taken out in the name of Sublessee and shall name Itel Corporation, Rail Division ("Itel Rail") and any assignee of Itel Rail as additional named insureds and shall also list Itel Rail and any assignee of Itel Rail as loss-payees on the insurance policies. Said policies shall provide that Itel Rail and any assignee of Itel Rail shall receive thirty (30) days prior written notice of any material changes in coverage or cancellation thereof.

- D. Within thirty (30) days from Sublessor's receipt of the receipted copy of the paid tax bill, Sublessor agrees to reimburse Sublessee for all taxes actually paid in cash by the Sublessee resulting from (1) ad valorem tax assessments on the Cars; and (2) any assessment, levy or impost relating to each Car, the Sublease or the delivery of the Cars which remained unpaid as of the date of the delivery of the Cars to Sublessee or which are assessed, levied or imposed during the term of this Sublease, except taxes on income imposed on Sublessee, gross receipts or sales and use tax imposed on the mileage charges and/or car hire revenue accruing to Sublessee or sale or lease of the Cars. Sublessor and Sublessee will comply with all state and local laws requiring filing of ad valorem tax returns associated with the Cars. Notwithstanding any portion of this Section, Sublessor shall not be responsible for penalty or interest assessments resulting from Sublessee's failure to comply with any regulation or statute of any city, county, state or other taxing or assessing authority. Sublessee shall forward to Sublessor upon receipt all correspondence, notifications of proposed tax assessments and tax bills associated with any tax reimbursable by Sublessor. Sublessor may, in good faith and by appropriate proceedings, contest any assessment, notification of assessment or tax bill. Sublessor shall assume full responsibility for all expenses including legal fees resulting from such contest.
- E. In the event that at Sublessee's request any or all of the Cars require storage at any time, Sublessee shall be responsible for the following: (1) all reasonable transportation costs incurred to move the Cars to such storage location; (2) all reasonable transportation costs incurred in removing such Cars from the storage location; and (3) the actual costs incurred for the storage of any or all of the Cars. If Sublessor pays for any costs referred to in this Section, Sublessee shall reimburse Sublessor for such cost within ten (10) days from Sublessee's receipt of Sublessor's invoice.

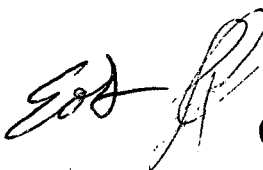
6. Lease Rental

A. Definitions

- (i) "Revenues" shall be the total revenues earned and due from other railroad companies for the use or handling of the Cars including, but not limited to, per diem and mileage, whether or not collected and received by Sublessor and without regard to any claimed abatement, reduction or offset, provided, however, that upon the occurrence of any such abatement, reduction or offset, Sublessee shall, within ten (10) days of Sublessor's request, reimburse Sublessor for such amounts.
- (ii) The "Base Rental" shall be defined for the period commencing as of the date of this Sublease through and including the expiration or earlier termination of this Sublease as an amount equal to the Revenues which the Cars would have earned in the aggregate at a Utilization Rate of seventy-three (73) percent with the assumption that each Car traveled ~~forty-five~~ ^{fifty-five} (65) miles a day. (A) Sublessor may, at its option and upon not less than fifteen (15) days prior written notice to Sublessee, terminate this Sublease

(A) For 266 days A YEAR

during the period commencing upon the expiration of the third Calendar Year ("Calendar Year" as hereinafter defined) through and including the expiration or earlier termination of this Sublease as to such Cars as Sublessor shall determine; provided, however, that Sublessee may, at its option, within ten (10) days of receipt of such notice from Sublessor, void such termination notice by agreeing in writing with the Sublessor that the Base Rental for the remainder of the Initial Term or any Extended Term shall be an amount equal to the Revenues which the Cars would have earned in the aggregate at a Utilization Rate of eighty-three (83) percent with the assumption that each Car traveled ~~fifty-five (55)~~ ^{Sixty} miles a day ^{FOR 30 days} ~~per year~~ ^{per year}

 (iii) The "Utilization Rate" of the Cars shall be determined by a fraction, the numerator of which is the aggregate number of days in each Calendar Year (as hereinafter defined) that Revenues were earned on the Cars commencing from the Initial Loading, and the denominator of which is the aggregate number of days in each Calendar Year that the Cars are on lease to Sublessee, commencing from the Initial Loading. Calendar Year as used in this Sublease shall be defined as each succeeding twelve (12) month period from the execution hereof.

- B. Sublessor shall receive all Revenues earned by the Cars prior to their Initial Loading. Each Car shall become subject to the rental calculation under Section 6 upon the Initial Loading of such Car.
- C. Sublessee agrees to pay the following rent to Sublessor for the use of the Cars:
- (i) In the event Revenues earned in any Calendar Year or applicable portion thereof are equal to the applicable Base Rental, Sublessee shall pay to Sublessor an amount equal to the applicable Base Rental;
 - (ii) In the event Revenues earned in any Calendar Year or applicable portion thereof are less than the applicable Base Rental, Sublessee shall pay to Sublessor a sum equal to one hundred percent (100%) of the total Revenues.
 - (iii) In the event Revenues earned in any Calendar Year or applicable portion thereof exceed the applicable Base Rental, Sublessee shall pay to Sublessor an amount equal to the applicable Base Rental plus fifty (50) percent of all Revenues earned in excess of the applicable Base Rental and Sublessee shall receive the remaining fifty (50) percent of all Revenues earned in excess of the applicable Base Rental.
- D. (i) The calculations required in Section 6.C. shall be made within five (5) months after the end of each Calendar Year ("Yearly Calculations"). However, to enable Sublessor to meet its financial commitments, Sublessor shall, prior to making such calculations, retain the payments received by it on behalf of Sublessee. Further, since the parties desire to determine on a monthly basis during the

Ed
(A) Sublessee's revenue
sharing percentage of

first, second and third Calendar Years (hereinafter "Period"), the approximate amounts owed under Section 6.C., Sublessor shall within three (3) months after the end of each Service Month (hereinafter defined as the calendar month in which the Cars earn revenue under the terms of this Sublease), estimate on a monthly year to date basis the amount due either party pursuant to this Section. If, with respect to any Service Month during the Period, nonpayment of monies due from any other railroad for the use or handling of the Cars are not received within one hundred twentieth (120th) day after the end of such Service Month (hereinafter "Nonpayment(s)"), an amount equal to such Nonpayments shall be deducted from the amount due to Sublessee from Sublessor in the then current month; provided, however, that upon Sublessor's receipt of such previously unpaid payments from any railroad, an amount equal to such paid payments shall be added to the amount due to Sublessee from Sublessor in the then current month. Further, since the parties desire to determine on a quarterly basis during the period commencing upon the expiration of the third Calendar Year through and including the expiration or earlier termination of this Sublease, the approximate amounts owed under Section 6.C., Sublessor shall within three (3) months after the end of each calendar quarter, estimate on a quarterly year to date basis the amount due either party pursuant to this Section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that following the Yearly Calculation, any amount paid to either party in excess of the amounts required shall be promptly refunded to the appropriate party. Sublessor desires and requests that Sublessee provide for the direct payment to Itel Rail any amounts due Sublessor under Section 6.C. hereunder so as to defray all of Sublessor's obligations under its agreement with Itel Rail.

- (ii) Any Car not on Sublessee's railroad line and not earning revenue for ten (10) consecutive days as a result of running repairs, maintenance or servicing, except in those instances in which the Interchange Rules would assign responsibility to Sublessee for the loss, damage, destruction or liability requiring such running repairs, maintenance or servicing, shall be removed from the calculation of the Utilization Rate with respect to Section 6.E. on the eleventh (11th) day and returned to the calculation of the Utilization Rate with respect to Section 6.E. on the date such Car becomes available for interline revenue service.

- Ed*
(iii) ~~The Utilization Rate, as defined in Subsection 6.A.(iii) determines the amount of earnings each Car has offline per diem earnings only. The average miles per day calculation shall be the total number of miles traveled offline in any given Service Month divided by the number of offline days in such Service Month.~~

E. (i) If, with respect to any calendar quarter during the second and third Calendar Year, the Utilization Rate of the Cars is less than the sixty (60) percent, Sublessor may, at any time, at its option and upon not less than ten (10) days prior written notice to Sublessee, terminate this Sublease as to such Cars as Sublessor shall determine; provided, however, that Sublessee may, at its option, within ten (10) days of receipt of such notice from Sublessor, void such termination notice by paying to Sublessor an amount equal to the difference between actual Revenues for such calendar quarter and the amount equal to the Revenue which the Cars would have earned in the aggregate at a Utilization Rate of sixty (60) percent with the assumption that each Car traveled ~~fifty-five~~ ^{Sixty} (65) miles per day for such calendar quarter.

Ed R

(ii) If, with respect to any calendar quarter during the period commencing upon the expiration of the third Calendar Year through and including the expiration or earlier termination of this Sublease, the Utilization Rate of the Cars is less than eighty (80) percent, Sublessor may, at any time, at its option and upon not less than ten (10) days prior written notice to Sublessee, terminate this Sublease as to such Cars as Sublessor shall determine; provided, however, that Sublessee may, at its option, with ten (10) days of receipt of such notice from Sublessor, void such termination notice by paying to Sublessor an amount equal to the difference between actual Revenues for such calendar quarter and the amount equal to the Revenues which the Cars would have earned in the aggregate at a Utilization Rate of eighty (80) percent with the assumption that each Car traveled ~~fifty-five~~ ^{Sixty} (65) miles a day for such calendar quarter.

Ed R

F. If, subsequent to the Initial Loading, any Car remains on Sublessee's railroad tracks for more than seven (7) consecutive days, excluding those days such Car is undergoing servicing, repair or alteration as provided for in Section 5 unless such servicing, repair or alteration was occasioned by the fault of Sublessee, Sublessor may, at its option and upon not less than twenty-four (24) hours prior written notice, terminate this Sublease as to such Car and withdraw such Car from Sublessee's railroad tracks. If any such Car has remained on Sublessee's railroad tracks for more than seven (7) consecutive days because Sublessee has not given preference to the Cars as specified in Section 3.B., Sublessee shall be liable for and remit to Sublessor an amount equal to the Revenues which would have been generated if such Car had been in the physical possession and use of another railroad for the entire period with the assumption that each Car travelled ~~fifty-five~~ ^{Sixty} (65) miles per day.

Ed R

G. In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Rule 7 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Car will be removed from the rental calculations of this Sublease on the date car hire ceased as set forth in the aforementioned Rule 7.

7. Possession and Use

- A. So long as Sublessee shall not be in default under this Sublease, Sublessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Sublease and in the manner and to the extent the Cars are customarily used in the railroad freight business as set forth in Subsection 7.B. However, Sublessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by IteL Rail in connection with the acquisition of the Cars which are the subject of this Sublease. Accordingly, following notice to Sublessee from any such secured party or owner that an event of default has occurred at any time (including at a time prior to the effective date of this Sublease), and is continuing under such financing agreement, such party may require either or both that rentals and other sums due hereunder shall be paid directly to such party, and that the Cars immediately be returned to such party. Sublessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars shall at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same are operated and in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either Sublessor or Sublessee may in good faith and by appropriate proceedings, contest the application of any such act, rule, regulation or order in any reasonable manner at the expense of the contesting party.
- B. The use of the Cars shall be limited to use by a rail common carrier and the Cars shall always bear the reporting marks of a rail common carrier. During the term of this Sublease, the Cars shall at all times be registered in the Official Railway Equipment Register and the UMLER.
- C. Sublessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim arising through it, on, or with respect to the Cars, or any interest therein or in this Sublease or Schedule thereto. Sublessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

8. Default

- A. The occurrence of any of the following events shall be an event of default:

 - (i) The nonpayment by Sublessee of any sum required herein to be paid by Sublessee within ten (10) days after the date any such payment is due;
 - (ii) The breach by Sublessee of any other term, covenant, or condition of this Sublease, which is not cured within ten (10) days after notice from Sublessor of such breach. If such default cannot be cured within ten (10) days, Sublessee shall not be in default if Sublessee commenced to cure default within such period and thereafter uses due diligence to cure such default.

- (iii) The filing by or against the Sublessee of any petition or the initiation by or against the Sublessee of any proceeding: (a) for any relief which includes, or might result in, any modification of the obligations of the Sublessee hereunder; or (b) under any bankruptcy, reorganization, insolvency, moratorium or other laws relating to the relief of debtors, the readjustment of indebtedness, financial reorganization, arrangements with creditors, compositions of indebtedness, or extensions of indebtedness which adversely affects the material financial position of Sublessee.
 - (iv) The subjection of any of Sublessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency which is not cured within ninety (90) days.
 - (v) Any action by Sublessee to discontinue rail service on all or a major portion of its track or abandon any major portion of its rail properties pursuant to applicable provisions of the Interstate Commerce Act or the laws of any state.
- B. Upon the occurrence of any event of default hereunder, without limiting Sublessor's rights and remedies otherwise provided by law which shall be available to Sublessor in addition to the following rights and remedies (no right or remedy of Sublessor being exclusive but all such rights and remedies being available at all times to Sublessor and Sublessor in any case being entitled to recover all costs, expenses and attorneys' fees incurred by Sublessor in enforcing its rights and remedies hereunder), Sublessor may, at its option, terminate this Sublease and/or may
- (i) Proceed by any lawful means to enforce performance by Sublessee of this Sublease or to recover damages for a breach thereof, and/or
 - (ii) By notice in writing to Sublessee, terminate Sublessee's right of possession and use of the Cars, whereupon all right and interest of Sublessee in the Cars shall terminate; and thereupon Sublessor may enter upon any premises where the Cars may be located and take possession of the Cars and henceforth hold, possess and enjoy the same free from any right of Sublessee. Sublessor shall, in addition, have the right to recover from Sublessee any and all rental amounts which under the terms of this Sublease may then be due or which may have accrued to that date, together with Sublessor's costs and expenses, including reasonable attorneys' fees incurred in securing such enforcement hereof.

9. Termination

- A. Upon the expiration or earlier termination of this Sublease with respect to a Car, Sublessee shall promptly return such Car to Sublessor by delivering such Car to the location specified by Sublessor which shall be at either (1) the Sublessee's railroad tracks, or (2) or another location mutually agreed upon by the parties hereto. Subsequent procedures shall depend on the location of delivery as follows:

(A) If Sublessee does not give preference in loading the Cars as set forth in

(i) If, in the event of expiration, some or all of the Cars are to be delivered to Sublessor at Sublessee's railroad tracks, Sublessor shall be responsible for any transportation costs incurred in moving such Cars to the Sublessee's railroad tracks subsequent to the time of expiration. If, in the event of earlier termination, whether pursuant to ~~Subsection 6.A.(ii), Subsection 6.E. or Subsection 6.F. hereof or otherwise~~ ^{to Section 8}, some or all of the Cars are to be delivered to Sublessor at Sublessee's railroad tracks, Sublessee shall be responsible for any transportation costs incurred in moving such Cars to the Sublessee's railroad tracks subsequent to the time of earlier termination. Sublessee shall, at Sublessor's option, provide, with respect to any Car which is either on the Sublessee's railroad tracks at the time of expiration or earlier termination or is subsequently returned to Sublessee's railroad, up to sixty (60) days free storage on its railroad tracks. At the option of Sublessor, either Sublessee or a contractor chosen by Sublessor shall repaint and restencil the Cars. Restencilling, with respect to each Car, shall include the following: (i) removal of existing mandatory markings and all company logos of Sublessee; (ii) complete cleaning subsequent to the removal of markings and company logos as designated by Sublessor; (iii) application of new mandatory markings and company logos; and (iv) any transportation involved in moving each Car to and from a suitable work area to perform the restencilling set forth in this Section. Sublessee shall not remove Sublessee's railroad marks from any Car without the prior written consent of Sublessor. After repainting and restencilling, Sublessee shall, at Sublessor's option, use its best efforts to load the Cars with freight and deliver them to a connecting carrier for shipment.

(ii) If, in the event of expiration, some or all of the Cars are to be delivered to Sublessor at a location other than Sublessee's tracks, the cost of assembling, delivering, storing, and transporting each Car to such location shall be borne by Sublessor. If, in the event of earlier termination, whether pursuant to Section 8 or if Sublessee does not give preference in loading the Cars as set forth in Subsection 6.F. hereof, some or all of the Cars are to be delivered to Sublessor at a location other than Sublessee's tracks, the cost of assembling, delivering, storing, and transporting each Car to such location shall be borne by Sublessee.

B. Upon the expiration of this Sublease, Sublessor shall bear the expense of repainting and restencilling the Cars; upon the earlier termination of this Sublease, whether pursuant to Section 8, or if Sublessee does not give preference in loading the Cars as set forth in Subsection 6.F. hereof, Sublessee shall bear the expense of repainting and restencilling each Car. Upon the earlier termination of this Sublease, whether pursuant to Subsection 6.A.(ii) or Subsection 6.E. hereof, Sublessee shall bear the expense of restencilling each Car and shall use its best efforts to provide the last outbound load for each Car.

10. Indemnities

- A.** SUBLESSEE SHALL DEFEND, INDEMNIFY AND HOLD SUBLESSOR HARMLESS FROM AND AGAINST ANY LOSS, DAMAGE, DESTRUCTION OR LIABILITY WITH RESPECT TO THE CARS WHICH IS OCCASIONED BY THE FAULT OF SUBLESSEE, OR WHICH OCCURS WHILE THE CARS ARE IN SUBLESSEE'S POSSESSION OR CONTROL, OR IN THOSE INSTANCES IN WHICH THE INTERCHANGE RULES WOULD ASSIGN RESPONSIBILITY FOR SUCH LOSS, DAMAGE, DESTRUCTION, OR LIABILITY TO SUBLESSEE.
- B.** SUBJECT TO SECTION 10.A., AND EXCEPT FOR THOSE CLAIMS, CAUSES OF ACTION, DAMAGES, LIABILITIES, COSTS OR EXPENSES FOR WHICH SUBLESSEE SHALL BE RESPONSIBLE AS SET FORTH HEREIN, SUBLESSOR WILL DEFEND, INDEMNIFY AND HOLD SUBLESSEE HARMLESS AGAINST ANY AND ALL LOSS, DAMAGE OR DESTRUCTION OF OR TO THE CARS, USUAL WEAR AND TEAR EXCEPTED, AND ANY CLAIM, CAUSE OF ACTION, DAMAGE, LIABILITY, COST OR EXPENSE WHICH MAY BE ASSERTED AGAINST SUBLESSEE WITH RESPECT TO THE CARS, INCLUDING WITHOUT LIMITATION, THE LEASING OR RETURN OF THE CARS, USE, MAINTENANCE, REPAIR, REPLACEMENT OR OPERATION OF THE CARS OR THE CONDITION OF THE CARS (WHETHER DEFECTS, IF ANY, ARE LATENT OR ARE DISCOVERABLE BY SUBLESSOR OR SUBLESSEE).

11. Representations, Warranties and Covenants

Sublessee represents, warrants and covenants that:

- A.** Sublessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and has the corporate power, authority and, insofar as is material to Sublessor's rights under this Sublease, is duly qualified and authorized to do business wherever necessary, to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Sublease.
- B.** The entering into and performance of this Sublease will not violate any judgment, order, law or regulation applicable to Sublessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Sublessee or on the Cars pursuant to any instrument to which Sublessee is a party or by which it or its assets may be bound.
- C.** There is no action or proceeding pending or threatened against Sublessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Sublessee such that Sublessee's ability to perform its obligations hereunder would be materially and adversely affected.

- D. There is no fact which Sublessee has not disclosed to Sublessor in writing, nor is Sublessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as the Sublessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of the Sublessee or the ability of the Sublessee to perform its obligation under this Sublease.

12. Inspection

Sublessor shall at any time during normal business hours have the right to enter the premises where the Cars may be located for the purpose of inspecting and examining the Cars to insure Sublessee's compliance with its obligations hereunder.

13. Conditions of Itel Rail's Consent to Sublease

Itel Rail hereby gives its written consent for Sublessor and Sublessee to enter into this Sublease for the Cars described on Equipment Schedule No. 1 attached hereto which are subject to a Lease Agreement ("Agreement") dated February 17, 1982 between Itel Rail, as Lessor, and Kyle Railways, Inc., as lessee. Itel Rail's consent hereunder is specifically conditioned on the following: (1) Sublessor's and Sublessee's agreement hereunder that Sublessor shall remain primarily liable for the payment of the rent set forth in the Agreement and for the performance of all the other terms of the Agreement to be performed by the Sublessor; (2) Sublessor's and Sublessee's agreement hereunder that the Sublease is subject and subordinate to the rights of Itel Rail under the Agreement and to any amendment or modification thereof; and (3) Sublessor's and Sublessee's agreement hereunder that during this Sublease, any reference to Sublessor under the Agreement with respect to any of Sublessor's obligations (but not Sublessor's rights) or any of Itel Rail's rights shall also include Sublessee.

14. Miscellaneous

- A. This Sublease and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, provided, however, that Sublessee may not without the prior written consent of Sublessor assign this Sublease or any of its rights hereunder or sublease any Cars to any party, and any purported assignment or sublease in violation hereof shall be void.
- B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by Sublessor or its assignees in connection with the acquisition or financing or use of the Cars in order to confirm the financing parties' interest in and to the Cars, this Sublease and Schedules hereto and to confirm the subordination provisions contained in Section 7 of this Sublease.
- C. It is expressly understood and agreed by the parties hereto that this Sublease constitutes a lease of the Cars only and no joint sale or venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Sublessee any right, title or interest in the Cars, except as a Sublessee only.

- D. No failure or delay by Sublessor shall constitute a waiver or otherwise affect or impair any right, power or remedy available to Sublessor nor shall any waiver or indulgence by Sublessor or any partial or single exercise of any right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.
- E. This Sublease shall be governed by and construed according to the laws of the State of California.
- F. Sublessee shall notify Sublessor as soon as is practicable of any accident connected with the malfunctioning or operation of the Cars, including in such report, where available, the time, place and nature of the accident and the damage caused.
- G. Sublessee shall also notify Sublessor in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Car. Sublessee shall furnish to Sublessor promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements required to be submitted to the ICC.
- H. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, addressed to the president of the other party at the address set forth herein.
- I. The obligations and liabilities of Sublessor and Sublessee hereunder shall survive the expiration or earlier termination of this Sublease.
- J. This Sublease represents the entire Sublease. This Sublease shall not be modified, altered, or amended, except by an agreement in writing signed by the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Sublease as of the date first above written.

KYLE RAILWAYS, INC.

By: 

Title: Executive Vice-President

Date: February 23, 1982

NATCHEZ TRACE RAILROAD

By: 

Title: Executive Vice-President

Date: February 23, 1982

ACKNOWLEDGEMENT AND CONSENT:


Itel Corporation, Rail Division

Date: 3-1-82

L-0276

EQUIPMENT SCHEDULE NO. 1

Kyle Railways, Inc. hereby leases the following Cars to Natchez Trace Railroad subject to the terms and conditions of that certain Sublease Agreement dated as of February 18, 1982.

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions		Doors Width	No. of Cars
				Inside Width	Height		
XM	General Purpose 70-ton Boxcars	NT					70

KYLE RAILWAYS, INC.

BY: 

TITLE: Executive Vice-President

DATE: February 23, 1982

NATCHEZ TRACE RAILROAD

BY: 

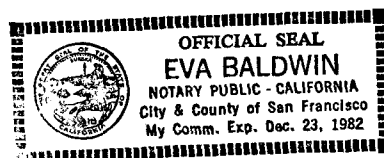
TITLE: Executive Vice-President

DATE: February 23, 1982

STATE OF CALIFORNIA)
COUNTY OF SAN FRANCISCO) ss:

On this 23rd day of February, 1982, before me personally appeared L. T. CECIL, to me personally known, who being by me duly sworn says that such person is Executive Vice-Pres. of Kyle Railways, Inc., that the foregoing Sublease Agreement and Equipment Schedule No. 1 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Eva Baldwin
Notary Public



STATE OF CALIFORNIA)
COUNTY OF SAN FRANCISCO) ss:

On this 23rd day of February, 1982, before me personally appeared L. T. CECIL, to me personally known, who being by me duly sworn says that such person is Executive Vice-President of Natchez Trace Railroad, that the foregoing Sublease Agreement and Equipment Schedule No. 1 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Eva Baldwin
Notary Public

